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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,949	02/09/2001	Anh Si Le	SPI/HER(4289*120)	4810
23416	7590	03/22/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			CORBIN, ARTHUR L	
P O BOX 2207			ART UNIT	
WILMINGTON, DE 19899			PAPER NUMBER	

1761

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,949

Applicant(s)

LE ET AL.

Examiner

Arthur L Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 129-145 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 129-145 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The indicated allowability of claims 129 and 131-142 is withdrawn in view of the newly discovered reference(s) to Ohno et al and Synosky et al. As a result, the Examiner's Amendment is also withdrawn. Rejections based on the newly cited reference(s) follow.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 129 and 131-142 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ohno et al (5,988,453; col. 5, last line; Ex. 6 and Table 7).

Ohno et al discloses a pharmaceutical composition including granules compressed to form tablets. The composition includes 80% erythritol, 1% citric acid and a flavor.

5. Claim 130 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohno et al in view of Synosky et al.

Synosky et al discloses a chewing gum composition including 5-95% bulk sweetener, e.g., erythritol (cols. 7-8) and Table 7. The composition may be used as a pharmaceutical and contain flavoring agents. It would have been obvious to convert the pharmaceutical composition in Ohno et al into a chewing gum composition in order to increase patient compliance especially since a chewing gum composition including many of Ohno et al's components can be used as a pharmaceutical, as evidenced by Synosky et al.

6. Claims 143-145 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohno et al.

The particular form of the composition in Ohno et al is not critical and, in the absence unexpected results, is simply a matter of personal preference and consumer appeal.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Murakami et al shows that erythritol is a white crystalline powder (col. 5, lines 22) that may be present in a pharmaceutical composition along with a flavor (col. 7, lines 35-38).

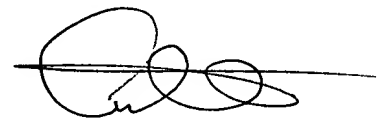
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af
March 17, 2005



ARTHUR L. CORBIN
PRIMARY EXAMINER

3-17-05